

# State of South Dakota

## SEVENTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2003

725I0486

### HOUSE BILL NO. 1111

Introduced by: Representatives Michels, Cradduck, Gillespie, Glenski, Konold, McCoy, Peterson (Bill), Sebert, Smidt, Thompson, Van Gerpen, and Wick and Senators Diedrich (Larry), Ham, Jaspers, Kleven, McCracken, Sutton (Dan), and Vitter

1 FOR AN ACT ENTITLED, An Act to authorize construction management services to be  
2 employed on public improvement projects.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 For the purposes of this chapter, the term, construction management, means any project  
7 delivery system based on an agreement whereby a construction manager provides leadership to  
8 the construction process through a series of services to the public corporation.

9 Section 2. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 For the purpose of this chapter, the term, construction management services, means the  
12 following:

13 (1) Services provided in the planning and design phases of a public improvement project  
14 including the following:



- 1 (a) Consulting with, advising, assisting, and making recommendations to the public
- 2 corporation and architect or engineer on all aspects of planning for project
- 3 construction;
- 4 (b) Reviewing all plans and specifications as they are being developed and making
- 5 recommendations with respect to construction feasibility, availability of
- 6 material and labor, time requirements for procurement and construction, and
- 7 projected costs;
- 8 (c) Making, reviewing, and refining budget estimates based on the public
- 9 corporation's program and other available information;
- 10 (d) Making recommendations to the public corporation and the architect or
- 11 engineer regarding the division of work in the plans and specifications to
- 12 facilitate bidding and awarding of contracts;
- 13 (e) Soliciting the interest of capable contractors and assisting the public
- 14 corporation in taking bids on the project;
- 15 (f) Analyzing the bids received and awarding contracts; and
- 16 (g) Preparing and monitoring a progress schedule during the design phase of the
- 17 project and preparation of a proposed construction schedule; and
- 18 (2) Services provided in the construction phase of the public improvement project
- 19 including the following:
- 20 (a) Maintaining competent supervisory staff to coordinate and provide general
- 21 direction of the work and progress of the contractors on the project;
- 22 (b) Observing the work as it is being performed for general conformance with
- 23 working drawings and specifications;
- 24 (c) Establishing procedures for coordinating among the public corporation,

1 architect or engineer, contractors, and construction manager with respect to  
2 all aspects of the project and implementing labor policy in conformance with  
3 the requirements of the public corporation's policy and making  
4 recommendations;

5 (d) Reviewing and processing all applications for payment by involved contractors  
6 and material suppliers in accordance with the terms of the contract;

7 (e) Making recommendations for and processing requests for changes in the work  
8 and maintaining records of change orders;

9 (f) Scheduling and conducting job meetings to ensure orderly progress of the  
10 work;

11 (g) Developing and monitoring a project progress schedule, coordinating and  
12 expediting the work of all contractors, and providing periodic status reports to  
13 the owner and the architect and engineer; and

14 (h) Establishing and maintaining a cost control system and conducting meetings to  
15 review costs.

16 Section 3. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 For the purposes of this chapter, the term, construction manager, means any person or entity  
19 providing construction management services for a public corporation, and either a construction  
20 manager-agent or construction manager-at-risk.

21 Section 4. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 For the purposes of this chapter, the term, construction manager-agent, means any  
24 construction manager that provides construction management services to a public corporation

1 in a fiduciary capacity. No construction manager-agent may contract directly with any contractor  
2 or supplier for the project.

3 Section 5. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 For the purposes of this chapter, the term, construction manager-at-risk, means any  
6 construction manager that assumes the risk for construction, rehabilitation, alteration, or repair  
7 of a public improvement, and provides construction management services to the public  
8 corporation. The construction manager-at-risk shall directly contract with subcontractors and  
9 suppliers for the project.

10 Section 6. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 Any public corporation may engage a construction manager if planning, designing, or  
13 construction a public improvement, or if improving, altering, or repairing a public improvement.  
14 However, no public corporation is required to engage a construction manager.

15 Section 7. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 Unless the construction manager-agent is an employee of the public corporation and provides  
18 the construction management services pursuant to such employment, no public corporation may  
19 engage the services of a construction manager except as follows:

20 (1) The public corporation shall first make the following determinations:

21 (a) That it is in the public interest to utilize the services of a construction manager;  
22 and

23 (b) That the construction management services would not unreasonably duplicate  
24 and would be in addition to the normal scope of separate architect or engineer

1 contracts;

2 (2) Notwithstanding any other provisions of this chapter, no construction manager may  
3 contract to perform actual construction on the project, except as follows:

4 (a) The construction manager may perform general conditions of the construction  
5 contract as required by the owner;

6 (b) The construction management is a construction manager-at-risk and was  
7 solicited through a qualification-based request for proposals method of  
8 procurement as provided in section 8 of this Act;

9 (c) Pursuant to a contract awarded on an emergency basis, pursuant to § 5-18-3.1;  
10 or

11 (d) Pursuant to a contract negotiated pursuant to § 5-18-9.1 or 5-18-9.2; and

12 (3) No person, firm, or corporation may act as a construction manager-agent and also as  
13 a contractor on any public improvement, except as follows:

14 (a) Pursuant to a contract awarded on an emergency basis, pursuant to § 5-18-3.1;  
15 or

16 (b) Pursuant to a contract negotiated pursuant to § 5-18-9.1 or 5-18-9.2.

17 Section 8. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 Each qualification based request for proposals to enter into a construction management  
20 services contract shall meet the following criteria:

21 (1) The public corporation shall, prior to issuing any request for proposals to enter in a  
22 construction management services contract, establish and publish procedures for the  
23 solicitation and award of such contracts, which procedures shall include the following:

24 (a) The procedures and standards to be used to qualify construction managers;

- 1 (b) The procedures for preparing and submitting proposals;
- 2 (c) The procedures for evaluating proposals;
- 3 (d) The procedures for negotiations between the public corporation and those
- 4 submitting proposals prior to the acceptance of a proposal. The procedures
- 5 shall contain safeguards to preserve the confidential information and
- 6 proprietary information supplied by those submitting proposals; and
- 7 (e) The procedures for awarding construction management services contracts;
- 8 (2) A request for proposals to enter into a construction management services contract
- 9 shall contain the following elements:
- 10 (a) The identity of the public corporation;
- 11 (b) A description of the proposed public improvement;
- 12 (c) A description of the qualifications the construction manager will be required
- 13 to have;
- 14 (d) The procedures to be followed for submitting proposals, the criteria for
- 15 evaluation of a proposal and its relative weight, and procedures for making
- 16 awards;
- 17 (e) The proposed terms and conditions for the construction management services
- 18 contract, including a description of the scope of services to be provided, and
- 19 whether the construction manager will be construction manager-agent or
- 20 construction manager-at-risk;
- 21 (3) Notice of any request for proposals shall be advertised in accordance with the
- 22 provisions of § 5-18-3;
- 23 (4) After obtaining and evaluating proposals, a public corporation may accept the
- 24 proposal it considers the most advantageous to the public corporation. Acceptance

- 1 of a proposal shall be by written notice to the construction manager submitting the
- 2 accepted proposal, and by simultaneously notifying in writing the other construction
- 3 managers that their proposals were not accepted; and
- 4 (5) The public corporation shall reserve the right to reject any or all proposals submitted.